IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.118 OF 2006

M/s.Shiva Developers ...Appellant

Vs.

Bhalchandra Govind Bhagat & Anr. ...Respondents

Ms S.M.Dandekar for the Appellant and added Respondent No.2
Mr.V.R.Tripathi for the Respondent No.1.

CORAM: A.S.OKA, J.
DATED: MARCH 22,2006.

P.C.:

1. Admit. Advocate for the Respondent No.1 waives service. The proprietor of the Appellant (original defendant No.2) has filed an affidavit. In the said Affidavit it is stated that he has authority to represent the original Defendant No.1 M/s. Roopal Builders.

2. On the oral prayer made by the Advocate for the Appellant, M/s. Roopal Builders is permitted to be reimpleaded as a party Respondent No.2 in the First Appeal. Amendment to be carried out within a period of two weeks from today. As the proprietor of the Appellant is authorised to represent the Respondent No.2, service of notice to the Respondent No.2 is dispensed with. Affidavit of the proprietor of the Appellant is taken on record and marked 'X' for identification. By consent, First Appeal is taken up forthwith for hearing.

3. The learned Advocate for the Respondent No.1 states that

the Respondent No.1 (original Plaintiff) has no objection if the impugned Judgment and decree is set aside subject to payment of heavy costs by the Appellant. He states that the suit may be ordered to be heard expeditiously.

4. The learned Advocate for the Appellant states that the written statement of the Appellant and Respondent No.2 is ready and the same will be filed immediately.

5. In view of what is stated by the Advocate for the Respondent No.1 and considering the facts of the case, the decree passed against the Appellant deserves to be quashed and set aside subject to condition of the Appellant paying costs of Rs.10,000/- to the Respondent No.1 within the time stipulated by this order.

6. Hence I pass the following order :

i) Impugned Judgment and decree is quashed and set aside and the S.C.Suit No.1984 of 2002 is restored to the file.

ii) The parties are directed to appear before the learned Principal Judge, City Civil Court, Bombay on 10th April 2006. The learned Principal Judge will assign the suit to appropriate court for hearing and final disposal.

iii) The Appellant and the Respondent No.2 are permitted to

file written statement on or before 24th April 2006. If written statements are not filed by that date, the Trial Court will not permit the Appellant and the Respondent No.2 to file written statement.

iv) The impugned Judgment and decree is set aside subject to condition that the Appellant will pay costs of Rs.10,000/- to the Respondent No.1 on or before 5th April 2006. The deposit of the said amount in the City Civil Court on or before the stipulated date will be treated as sufficient compliance of this order. If the amount is neither paid nor deposited by the Appellant, the decree passed by the trial Court will stand.

v) Hearing of the suit is expedited. The learned Trial Judge will decide the suit as expeditiously as possible and preferably on or before 31st December 2006.

vi) Appeal is partly allowed in above terms.

vii) All contentions of the parties on merits of the suit are kept open.

viii) The learned Principal Judge and the parties will act upon an authenticated copy of this order.

Judge.